

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE APRIL 15, 2013

**SENATE BILL**

**No. 650**

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**Introduced by Senator Lieu**

February 22, 2013

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An act to ~~amend Section 25249.7 of the Health and Safety Code, relating to toxic chemicals; add Section 9321.1 to, and to repeal and amend Section 9321 of, the Commercial Code, relating to business.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 650, as amended, Lieu. ~~Toxic chemicals; exposure. Motion pictures.~~

*Existing law provides, until January 1, 2015, that a licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.*

*This bill would remove the repeal of this provision on January 1, 2015, thus making this provision in effect indefinitely.*

*This bill would also provide that a licensee of nonexclusive rights in a motion picture that is produced pursuant to one or more collective bargaining agreements, as specified, takes its nonexclusive license in the motion picture subject to any perfected security interest securing the obligation to pay residuals as set forth in the applicable collective bargaining agreement and arising from exploitation under the license.*

~~(1) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without~~

~~giving a specified warning, or from discharging or releasing such a chemical into any source of drinking water, except as specified. The act provides that it does not alter or diminish any legal obligation otherwise required in common law or by statute or regulation, or create or enlarge any defense in any action to enforce a legal obligation. The act requires a person bringing an action in the public interest, or a private person filing an action in which a violation of the act is alleged, to provide to specified entities, including to the Attorney General, a notice of an alleged violation at least 60 days prior to the filing of the action and to report to the Attorney General the results of a settlement or judgment and the final disposition of a case brought by the person. The act requires the Attorney General to maintain a record of the notice and report and to make the information available to the public.~~

~~This bill would specifically require the Attorney General to post the above information on its Internet Web site.~~

~~(2) Proposition 65 provides that it may be amended by a statute, passed in each house by a  $\frac{2}{3}$  vote, to further its purposes.~~

~~This bill would find and declare that it furthers the purposes of Proposition 65.~~

~~Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 9321 of the Commercial Code, as  
2     amended by Section 2 of Chapter 54 of the Statutes of 2013, is  
3     repealed.

4     9321. ~~(a) A lessee in ordinary course of business takes its~~  
5     leasehold interest free of a security interest in the goods created  
6     by the lessor, even if the security interest is perfected and the lessee  
7     knows of its existence.

8     ~~(b) This section shall become operative on January 1, 2015.~~

9     SEC. 2. Section 9321 of the Commercial Code, as added by  
10    Section 3 of Chapter 54 of the Statutes of 2013, is amended to  
11    read:

12    9321. (a) In this section, “licensee in ordinary course of  
13    business” means a person that becomes a licensee of a general  
14    intangible in good faith, without knowledge that the license violates  
15    the rights of another person in the general intangible, and in the  
16    ordinary course from a person in the business of licensing general

1 intangibles of that kind. A person becomes a licensee in the  
2 ordinary course if the license to the person comports with the usual  
3 or customary practices in the kind of business in which the licensor  
4 is engaged or with the licensor's own usual or customary practices.

5 (b) A licensee in ordinary course of business takes its rights  
6 under a nonexclusive license free of a security interest in the  
7 general intangible created by the licensor, even if the security  
8 interest is perfected and the licensee knows of its existence.

9 (c) A lessee in ordinary course of business takes its leasehold  
10 interest free of a security interest in the goods created by the lessor,  
11 even if the security interest is perfected and the lessee knows of  
12 its existence.

13 ~~(d) This section shall remain in effect only until January 1, 2015,~~  
14 ~~and as of that date is repealed, unless a later enacted statute, that~~  
15 ~~is enacted before January 1, 2015, deletes or extends that date.~~

16 SEC. 3. Section 9321.1 is added to the Commercial Code, to  
17 read:

18 9321.1. Notwithstanding the foregoing, a licensee of  
19 nonexclusive rights in a motion picture that is produced pursuant  
20 to one or more collective bargaining agreements governed by the  
21 laws of the United States takes its nonexclusive license in such  
22 motion picture subject to any perfected security interest securing  
23 the obligation to pay residuals as set forth in the applicable  
24 collective bargaining agreement and arising from exploitation  
25 under such license. The terms "motion picture" and "residuals"  
26 have the meaning ascribed to such terms under the applicable  
27 collective bargaining agreements.

28 SECTION 1. ~~Section 25249.7 of the Health and Safety Code~~  
29 ~~is amended to read:~~

30 ~~25249.7. (a) Any person who violates or threatens to violate~~  
31 ~~Section 25249.5 or 25249.6 may be enjoined in a court of~~  
32 ~~competent jurisdiction.~~

33 ~~(b) (1) Any person who has violated Section 25249.5 or 25249.6~~  
34 ~~shall be liable for a civil penalty not to exceed two thousand five~~  
35 ~~hundred dollars (\$2,500) per day for each violation in addition to~~  
36 ~~any other penalty established by law. That civil penalty may be~~  
37 ~~assessed and recovered in a civil action brought in any court of~~  
38 ~~competent jurisdiction.~~

39 ~~(2) In assessing the amount of a civil penalty for a violation of~~  
40 ~~this chapter, the court shall consider all of the following:~~

1     ~~(A) The nature and extent of the violation.~~  
2     ~~(B) The number of, and severity of, the violations.~~  
3     ~~(C) The economic effect of the penalty on the violator.~~  
4     ~~(D) Whether the violator took good faith measures to comply~~  
5 ~~with this chapter and the time these measures were taken.~~  
6     ~~(E) The willfulness of the violator's misconduct.~~  
7     ~~(F) The deterrent effect that the imposition of the penalty would~~  
8 ~~have on both the violator and the regulated community as a whole.~~  
9     ~~(G) Any other factor that justice may require.~~  
10    ~~(e) Actions pursuant to this section may be brought by the~~  
11 ~~Attorney General in the name of the people of the State of~~  
12 ~~California, by a district attorney, by a city attorney of a city having~~  
13 ~~a population in excess of 750,000, or, with the consent of the~~  
14 ~~district attorney, by a city prosecutor in a city or city and county~~  
15 ~~having a full-time city prosecutor, or as provided in subdivision~~  
16 ~~(d).~~  
17    ~~(d) Actions pursuant to this section may be brought by any~~  
18 ~~person in the public interest if both of the following requirements~~  
19 ~~are met:~~  
20    ~~(1) The private action is commenced more than 60 days from~~  
21 ~~the date that the person has given notice of an alleged violation of~~  
22 ~~Section 25249.5 or 25249.6 that is the subject of the private action~~  
23 ~~to the Attorney General and the district attorney, city attorney, or~~  
24 ~~prosecutor in whose jurisdiction the violation is alleged to have~~  
25 ~~occurred, and to the alleged violator. If the notice alleges a~~  
26 ~~violation of Section 25249.6, the notice of the alleged violation~~  
27 ~~shall include a certificate of merit executed by the attorney for the~~  
28 ~~noticing party, or by the noticing party, if the noticing party is not~~  
29 ~~represented by an attorney. The certificate of merit shall state that~~  
30 ~~the person executing the certificate has consulted with one or more~~  
31 ~~persons with relevant and appropriate experience or expertise who~~  
32 ~~has reviewed facts, studies, or other data regarding the exposure~~  
33 ~~to the listed chemical that is the subject of the action, and that,~~  
34 ~~based on that information, the person executing the certificate~~  
35 ~~believes there is a reasonable and meritorious case for the private~~  
36 ~~action. Factual information sufficient to establish the basis of the~~  
37 ~~certificate of merit, including the information identified in~~  
38 ~~paragraph (2) of subdivision (h), shall be attached to the certificate~~  
39 ~~of merit that is served on the Attorney General.~~

1     ~~(2) Neither the Attorney General, a district attorney, a city~~  
2     ~~attorney, nor a prosecutor has commenced and is diligently~~  
3     ~~prosecuting an action against the violation.~~

4     ~~(e) A person bringing an action in the public interest pursuant~~  
5     ~~to subdivision (d) and a person filing an action in which a violation~~  
6     ~~of this chapter is alleged shall notify the Attorney General that the~~  
7     ~~action has been filed. Neither this subdivision nor the procedures~~  
8     ~~provided in subdivisions (f) to (j), inclusive, shall affect the~~  
9     ~~requirements imposed by statute or a court decision in existence~~  
10    ~~on January 1, 2002, concerning whether a person filing an action~~  
11    ~~in which a violation of this chapter is alleged is required to comply~~  
12    ~~with the requirements of subdivision (d).~~

13    ~~(f) (1) A person filing an action in the public interest pursuant~~  
14    ~~to subdivision (d), a private person filing an action in which a~~  
15    ~~violation of this chapter is alleged, or a private person settling a~~  
16    ~~violation of this chapter alleged in a notice given pursuant to~~  
17    ~~paragraph (1) of subdivision (d), shall, after the action or violation~~  
18    ~~is subject either to a settlement or to a judgment, submit to the~~  
19    ~~Attorney General a reporting form that includes the results of that~~  
20    ~~settlement or judgment and the final disposition of the case, even~~  
21    ~~if dismissed. At the time of the filing of a judgment pursuant to~~  
22    ~~an action brought in the public interest pursuant to subdivision (d),~~  
23    ~~or an action brought by a private person in which a violation of~~  
24    ~~this chapter is alleged, the plaintiff shall file an affidavit verifying~~  
25    ~~that the report required by this subdivision has been accurately~~  
26    ~~completed and submitted to the Attorney General.~~

27    ~~(2) A person bringing an action in the public interest pursuant~~  
28    ~~to subdivision (d), or a private person bringing an action in which~~  
29    ~~a violation of this chapter is alleged, shall, after the action is either~~  
30    ~~subject to a settlement, with or without court approval, or to a~~  
31    ~~judgment, submit to the Attorney General a report that includes~~  
32    ~~information on any corrective action being taken as a part of the~~  
33    ~~settlement or resolution of the action.~~

34    ~~(3) The Attorney General shall develop a reporting form that~~  
35    ~~specifies the information that shall be reported, including, but not~~  
36    ~~limited to, for purposes of subdivision (e), the date the action was~~  
37    ~~filed, the nature of the relief sought, and for purposes of this~~  
38    ~~subdivision, the amount of the settlement or civil penalty assessed,~~  
39    ~~other financial terms of the settlement, and any other information~~  
40    ~~the Attorney General deems appropriate.~~

~~(4) If there is a settlement of an action brought by a person in the public interest under subdivision (d), the plaintiff shall submit the settlement, other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings:~~

~~(A) Any warning that is required by the settlement complies with this chapter.~~

~~(B) Any award of attorney's fees is reasonable under California law.~~

~~(C) Any penalty amount is reasonable based on the criteria set forth in paragraph (2) of subdivision (b).~~

~~(5) The plaintiff subject to paragraph (4) has the burden of producing evidence sufficient to sustain each required finding. The plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in any proceeding without intervening in the case.~~

~~(6) Neither this subdivision nor the procedures provided in subdivision (e) and subdivisions (g) to (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on January 1, 2002, concerning whether claims raised by any person or public prosecutor not a party to the action are precluded by a settlement approved by the court.~~

~~(g) The Attorney General shall maintain a record of the information submitted pursuant to subdivisions (e) and (f) and shall make this information available to the public, including the posting of the information on its Internet Web site.~~

~~(h) (1) Except as provided in paragraph (2), the basis for the certificate of merit required by subdivision (d) is not discoverable. However, nothing in this subdivision shall preclude the discovery of information related to the certificate of merit if that information is relevant to the subject matter of the action and is otherwise discoverable, solely on the ground that it was used in support of the certificate of merit.~~

~~(2) Upon the conclusion of an action brought pursuant to subdivision (d) with respect to any defendant, if the trial court determines that there was no actual or threatened exposure to a listed chemical, the court may, upon the motion of that alleged violator or upon the court's own motion, review the basis for the belief of the person executing the certificate of merit, expressed~~

1 in the certificate of merit, that an exposure to a listed chemical had  
2 occurred or was threatened. The information in the certificate of  
3 merit, including the identity of the persons consulted with and  
4 relied on by the certifier, and the facts, studies, or other data  
5 reviewed by those persons, shall be disclosed to the court in an  
6 in-camera proceeding at which the moving party shall not be  
7 present. If the court finds that there was no credible factual basis  
8 for the certifier's belief that an exposure to a listed chemical had  
9 occurred or was threatened, then the action shall be deemed  
10 frivolous within the meaning of Section 128.7 of the Code of Civil  
11 Procedure, whichever provision is applicable to the action. The  
12 court shall not find a factual basis credible on the basis of a legal  
13 theory of liability that is frivolous within the meaning of Section  
14 128.7 of the Code of Civil Procedure.

15 (i) The Attorney General may provide the factual information  
16 submitted to establish the basis of the certificate of merit on request  
17 to any district attorney, city attorney, or prosecutor within whose  
18 jurisdiction the violation is alleged to have occurred, or to any  
19 other state or federal government agency, but in all other respects  
20 the Attorney General shall maintain, and ensure that all recipients  
21 maintain, the submitted information as confidential official  
22 information to the full extent authorized in Section 1040 of the  
23 Evidence Code.

24 (j) In an action brought by the Attorney General, a district  
25 attorney, a city attorney, or a prosecutor pursuant to this chapter,  
26 the Attorney General, district attorney, city attorney, or prosecutor  
27 may seek and recover costs and attorney's fees on behalf of any  
28 party who provides a notice pursuant to subdivision (d) and who  
29 renders assistance in that action.

30 SEC. 2. The Legislature finds and declares that this act furthers  
31 the purposes of the Safe Drinking Water and Toxic Enforcement  
32 Act of 1986 (Chapter 6.6 (commencing with Section 25249.5) of  
33 Division 20 of the Health and Safety Code).